

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte IFTIKHAR KHAN AND NAZIR KHAN

Appeal 2010-003194
Application 10/812,380
Technology Center 3700

DECISION ON SECOND REQUEST FOR REHEARING

This is a decision on the Second Request for Rehearing, filed January 14, 2011.

FINDINGS

1. The Board of Patent Appeals and Interferences (“Board”) entered a decision on August 24, 2010, reversing the Examiner’s rejections of claims 1-16 and 18-20, and affirming the Examiner’s rejection of claim 17.
2. On October 23, 2010, the Appellants filed a Request for Rehearing.
3. On November 18, 2010, the Board entered a Decision on Request for Rehearing. The Decision on Request for Rehearing denied Appellants’ request. The Decision also included as footnote 1 the following:

The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover

- letter attached to this decision.
4. With respect to requests for rehearing, 37 C.F.R. § 41.52(a) specifies:
No request for rehearing from a decision on rehearing will be permitted, unless the rehearing decision so modified the original decision as to become, in effect, a new decision, and the Board states that a second request for rehearing would be permitted.
 5. The Decision on Request for Rehearing did not state that a **second** request for rehearing would be permitted.
 6. On January 14, 2011, the Appellants filed a second Request for Rehearing.

DISCUSSION

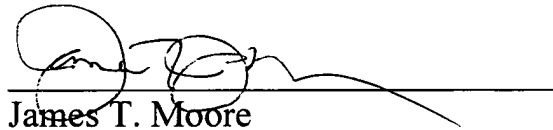
Appellants' Request for Rehearing did not mention the fact that a first Request for Rehearing was filed and decided. As noted above in Finding 4, no request for rehearing will be permitted, unless the rehearing decision so modified the original decision as to become a new decision. The Decision on Rehearing did not authorize Appellants to file a second Request for Rehearing.

Furthermore, Footnote 1 in the Decision on Request for Rehearing, as quoted above, clearly was intended to advise Appellant of the time period for filing an appeal or commencing a civil action or, if a substantive right to file a second request for rehearing had been granted in the Decision on Request for Rehearing, to file a second request for rehearing. This is a standard language footnote that recently was adopted by the Board for inclusion in all Board decisions to advise appellants of the time period for seeking further review, and is included in all Board decisions on appeal and decisions on request for rehearing.

As noted above, in the Decision on Request for Rehearing, the Board did not expressly state that a second request for rehearing would be permitted.

DECISION

In view of the foregoing, the Second Request for Rehearing is DENIED as procedurally barred by Rule 41.52(a). Appellant is granted two months from the date hereof to file an appeal or commence a civil action as provided in Rule 1.304.

A handwritten signature in black ink, appearing to read 'James T. Moore', is written over a horizontal line.

James T. Moore
Acting Chief Administrative Patent Judge

NAZIR A. KHA N
150 GLENMORA DRIVE
BURR RIDGE, IL 60527